IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 732 of 2004(S)

OA.469/2003 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONER:
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1. THE UNION OF INDIA, REP. BY THE
GENERAL MANAGER, SOUTHERN RAILWAY, PARK TOWN PO.,
CHENNAI - 3.

2. THE CHIEF PERSONALL OFFICER,
SOUTHERN RAILWAY, PARK TOWN P.O.
CHENNAI - 3.

3. THE DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY, PALGHAT DIVISION, PALAKKAD.

4. THE CHIEF COMMERCIAL MANAGER,
SOUTHERN RAILWAY, PARK TOWN, P.O.
CHENNAI-3.

BY ADV. SRI.K.P.DANDAPANI

RESPONDENTS:

K.RATHINAM, TRAVELLING TICKET EXAMINER,
SLEEPER/COMBATORE, RAILWAYS, RSIDING AT NO.54,
MARUTHI ILLAM, BHARATH NAGAR, PODDANNUR.

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.K.M.ANTHRU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON 27/09/2007 DELIVERED THE FOLLOWING:

APPENDIX

EXT.P1-TRUE COPY OF THE ORDER DATED 26.2.2003 PASSED BY THE THIRD PETITIONER TRANSFERRING THE RESPONDENT TO THE THIRUCHIRAPPALLY DIVISIONAL

EXT.P2-TRUE COPY OF OA 469/2003 FILED BY THE RESPONDENT HEREIN BEFORE THE CAT, ERNAKULAM ALONG WITH ENCLOSURES

EXT.P3-TRUE COPY OF REPLY STATEMENT ALONG WITH ENCLOSURES FILED BY THE PETITIONERS HEREIN TO OA 469/2003

EXT.P4-TRUE COPY OF ORDER DATED 17.11.2003 IN OA 469/2003 BY THE CAT, ERNAKULAM

RESPONDENTS' EXTS:

EXT.R1(A)-TRUE COPY OF REJOINDER DATED 26.9.2003 FILED BY R1 IN OA 469/2003

// TRUE COPY //

P.S. TO JUDGE

K. Balakrishnan Nair &
T.R. Ramachandran Nair, JJ.

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W.P.(C).NO.732 of 2004-S

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Dated this the 27th day of September, 2007

JUDGMENT

Balakrishnan Nair J.

The petitioners are the respondents in O.A. No.469/2003 on the file of the Central Administrative Tribunal, Ernakulam Bench. The respondent was the applicant. This writ petition is filed by the respondents in the O.A. Challenging Ext.P4 order of the Tribunal. The brief facts of the case are the following:

2. The respondent is a Travelling Ticket Examiner in the Railways. Certain irregularities committed by him were detected on 29/30th of October 2002. It was found that some passengers without proper tickets, were found travelling in a sleeper class coach under the charge of the respondent. According to the Railways, several malpractices were detected against the applicant and therefore they ordered inter division transfer of him from Palakkad Division to Thiruchirappally Division, by Ext.P1 order dated 26.2.2003. The respondent filed Ext.P2 O.A. before the C.A.T. challenging the said order on the ground that the same is vitiated on various grounds. According to him, the impugned transfer order was issued without

application of mind and without jurisdiction. The order has not been passed by the competent officer. It is issued in violation of Rule 226/227 of Indian Railway Establishment Code. Other contentions were also raised.

3. The petitioners herein filed Ext.P3 reply statement supporting the impugned transfer. According to them, the applicant was found indulging in malpractices on more than one occasion. So, in the light of Annexure R1 policy produced along with Ext.P3 reply, the transfer was ordered. Reliance was also placed on the various misconducts detected against him in the past and the punishment imposed. Annexure R2 produced along with Ext.P3 gives the details of them. The applicant filed a rejoinder. After hearing both sides, the O.A. was allowed by the Tribunal by Ext.P4 order. According to the Tribunal, the applicant can be subjected to inter division transfer only if the malpractices alleged are proven. In other words, on detection of any irregularities, he could not be transferred. The petitioners attack the said finding submitting that the Tribunal misread the scope of Annexure R1 policy produced along with the reply statement Ext.P3. If a member of the ticket checking staff who is in contact with the passengers, is detected to have committed malpractice, he can be subjected to inter division transfer, it is submitted.

4. The respondent reiterated the contentions raised by him before the

Tribunal. He supports the impugned order.

5. The rule governing transfer is contained in para 226 of Chapter 2 of the Railway Establishment Code containing General Conditions of Service. The said rule reads as follows:

> "**226. Transfers.---** Ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group C and Group D railway servants, the power of the President under this rule in respect of transfer, within India may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated."

The above rule provides that only in exigencies of service, transfer can be ordered. The term 'exigencies of service' is not specifically defined. But to regulate or control the discretion of the transferring authority, the Southern Railway Headquarters has issued Annexure R1 guidelines. Summarising the policy regarding inter division transfer, it is stated in Annexure R1 as follows:

> " It is therefore reiterated that inter divisional transfers should be resorted to only when
>
> 1. Successful trap cases.
>
> 2. The staff repeatedly figure in substantiated vigilance cases and where penalty have been imposed.

> 3. Ticket checking staff and also other staff in mass contact detected to be indulging in malpractices.
>
> In other cases (other than periodical transfer) if transfers are warranted, it may be made however within the same seniority unit as considered fit by the departmental authority controlling the cadre."

The applicant's transfer is governed by clause 3 of the above paragraph. Going by the above Exhibit, we feel that the stand taken by the Tribunal that only for proven malpractices an incumbent could be transferred, is unsupportable in law. Para 226 of the Railway Establishment Code empowers transfer in exigencies of service. If a Travelling Ticket Examiner is found permitting passengers to travel in a sleeper coach unauthorisedly, he can be transferred without prejudice to the disciplinary proceedings against him. Further, in this case as evident from Annexure R2 that the applicant has been subjected to disciplinary proceedings on several occasions. So, in such circumstances, if the competent authority feels that the applicant should be transferred, we feel that the same is definitely a transfer in exigencies of service. It is clearly authorised by para 226 of the Code. So, the stand of the Tribunal that only on the basis of proven malpractices transfer should be ordered, is untenable. Accordingly, Ext.P4 order of the C.A.T. is set aside.

6. Learned counsel for the respondent raised an apprehension that the respondent will have to continue in the transferee division indefinitely and

he will suffer many disabilities in the matter of promotion, etc. So, he prays, appropriate safeguards may be made in this regard as this court is interfering with the order of the Tribunal. In answer, learned counsel for the Railways submitted that the applicant has been transferred retaining his lien and he will be entitled to all benefits from Palakkad Division, which he would have got, had he been not transferred. Further, this being a transfer in exigencies of service, his claim for re-transfer shall also be considered. These submissions are recorded.

7. Accordingly, if the respondent files a representation to the competent authority among the petitioners highlighting his grievances including non-consideration of his claim for transfer back to his parent division, the said authority shall consider the same and shall take a decision. The said decision shall be intimated to the respondent within a period of three months from the date of receipt of the said representation.

The Writ Petition is disposed of as above.

(K. Balakrishnan Nair, Judge.)

(T.R. Ramachandran Nair, Judge.)

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